

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FLOYD STEVESON MOODY,

Plaintiff,

vs.

PAULETTE FINANDER, Chief Medical Officer, et al.,

Defendants.

CASE NO. 09-CV-892-LAB (BGS)

ORDER DENYING PLAINTIFF'S MOTION FOR APPOINTMENT OF EXPERT

Floyd Steveson Moody (“Plaintiff”), an incarcerated individual, brought this pro se civil rights suit alleging that prison officials, as well as medical personnel who treated him at Alvarado Hospital, violated his Eighth Amendment rights to adequate medical care. (Amend. Compl. Doc. No. 4.) On September 7, 2010, Plaintiff, who is proceeding pro se and in forma pauperis in this action, filed a motion for appointment of an expert to present documents of evidence. (Doc. No. 71.) Plaintiff requests that the Court provide him with an expert, or a list of experts, to assist him in his presentation of evidence. (Id. at 3-4.)

In his request, Plaintiff asserts that “expert testimony to the factual content of the records the Plaintiff intend[s] to produce as evidence supporting his claims is necessary.” (Id. at 2.) Plaintiff states that he has “attempted several contacts, but is only aware of contacts in the state of Texas,” and that all of his “attempts to secure [an] expert witness, ha[ve] been to no avail.” (Id. at 3.) Plaintiff requests that the Court appoint an expert, or list of experts, to

1 present medical evidence. (Id. at 1.) Plaintiff seeks a Court-appointed expert based on his in
2 forma pauperis status. (Id. at 1.)

3 An expert witness may testify to help the trier of fact determine the evidence or a fact
4 at issue. Fed.R.Evid. 702. A court has full discretion to appoint an expert witness either by its
5 own motion or by a party's motion. Fed.R.Evid. 706(a); McKinney v. Anderson, 924 F.2d
6 1500, 1510-11 (9th Cir.1991), overruled on other grounds by Helling v. McKinney, 502 U.S.
7 903 (1991). Appointment of an expert witness may generally be appropriate when "scientific,
8 technical, or other specialized knowledge will assist the trier of fact to understand the evidence
9 or decide a fact in issue...." Levi v. Dir. of Corr., 2006 WL 845733 *1 (E.D.Cal.2006) (citation
10 omitted).

11 Although Plaintiff is proceeding in forma pauperis, the court is not required to pay for
12 such an appointed expert. The in forma pauperis (IFP) statute, 28 U.S.C. § 1915, does not
13 waive the requirement of the payment of fees or expenses for witnesses in a § 1983 prisoner
14 civil rights action. Dixon v. Ylst, 990 F.2d 478, 480 (9th Cir.1993). "Reasonably construed,
15 [Rule 706] does not contemplate the appointment of, and compensation for, an expert to aid
16 one of the parties." Trimble v. City of Phoenix Police Dept., 2006 WL 778697 *2
17 (D.Ariz.2006) (citation omitted). Rather, Rule 706(a) permits the appointment of an expert to
18 aid the court. See Chan v. County of Sacramento, 2010 WL 3700193 *1 (E.D. Cal. 2010).

19 At present, the Court is not in need of expert assistance. To prevail on his Eighth
20 Amendment claim for deliberate indifference, Plaintiff must show that Defendants acted with
21 deliberate indifference to his serious medical needs. See Estelle v. Gamble, 429 U.S. 97, 104
22 (1983). Deliberate indifference has a subjective component because it requires the court to
23 "consider the seriousness of the prisoner's medical need and the nature of the defendant's
24 response to that need." Levi, 2006 WL 845733, 2006 U.S. Dist. LEXIS at 3 (citation omitted).
25 In the context of such a claim, "the question of whether the prison officials displayed deliberate
26 indifference to [Plaintiff's] serious medical needs [does] not demand that the jury consider
27 probing, complex questions concerning medical diagnosis and judgment." Id. Courts have
28 declined to appoint an expert under such circumstances. Id. Therefore, Plaintiff's request for

1 appointment of a medical expert witness is DENIED. The Court also denies Plaintiff's request
2 for a list of experts, as the Court does not maintain such lists to aid parties in the litigation of
3 their cases.

4 **IT IS SO ORDERED.**

5 DATED: October 4, 2010

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7 **BERNARD G. SKOMAL**
United States Magistrate Judge

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